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9 Woodbine Alaska Fish Company,
and Guy Ferrari Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

13 CITICAPITAL COMMERCIAL CORP.,)
14 Plaintiff,)
15 v.)
16)

**Case No. A-04-0147 CI
IN ADMIRALTY**

16 EGEGIK SPIRIT, official number 2999957,)
17 her equipment, gear, furniture, apparel,)
18 fixtures, tackle, boats, machinery, anchors)
19 and all appurtenances, in rem;)
20 NAKNEK SPIRIT, official number 585824,)
21 her equipment, gear, furniture, apparel,)
fixtures, tackle, boats, machinery, anchors)
and all appurtenances, in rem;)
WOODBINE ALASKA FISH CO.,)
in personam; and GUY FERRARI, INC,)
in personam.)

**DEFENDANTS AND CROSS-
COMPLAINANTS' OBJECTION
AND MOTION FOR
RECONSIDERATION OF
PLAINTIFF'S SECOND
MOTION FOR EXTENSION OF
TIME**

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1 Now come Defendants Woodbine Alaska Fish Company for itself, and on behalf
 2 of its vessel, the Eggevik Spirit, and hereby object to the Court's order granting Plaintiff's
 3 second motion for extension of time.

4 NOTICE is hereby given that Defendants Guy Ferrari, Sr. and Virginia Ferrari
 5 hereby move this Court for reconsideration on the grounds that Plaintiff motion was not
 6 filed pursuant to local rule 7.2(c) (shortened time) or on an *ex parte* basis and that
 7 **Defendants have a right to oppose a motion before the Court rules on it.**

8 This motion is based upon this notice of motion, the memorandum of points and
 9 authorities, and any other matter of which this Court wishes to take judicial notice.

10 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
 11 RECONSIDERATION**

12 **BACKGROUND**

13 The deadline for filing any objections to the initial magistrate recommendations
 14 was February 15, 2006. Plaintiff filed none. The recommendation extended further time to
 15 file any response to an objection until the 23rd of February (additional time from the five
 16 days for a total of eight days, or three more days).

17 The only time period proscribed by Local Rule 12(C) for filing of objections and
 18 responses is after (1) the initial recommendations; (2) before the matter is transferred; and
 19 (3) as provided by the magistrate. It was therefore procedurally incorrect for Plaintiff to
 20 object to the final recommendation after it had been referred back to the judge, or
 21 otherwise, when the specific orders of the magistrate had not provided for it. This matter
 22 was referred to the Judge and was no longer appropriate for objection. This Court has
 23 already generously extended the amount of time provided by Local Rule 12(C) for
 24 responses to objections, allowing eight days, to February 23, 2006. This Court has also
 25

generously already granted Plaintiff an extension of time, giving Plaintiff exactly the amount of time Plaintiff requested. Now Plaintiff moves again for even more time in a motion, not filed on an *ex parte* basis, and this Court ruled on it without permitting an opposition.

ARGUMENT

Local Rule 7.1(e) states: "Unless otherwise ordered by the court, provided by statute, or rule, an opposition must be served and filed within fifteen (15) days of service of the motion, and replies within five (5) days of service of the opposition." Here the Court ruled on the motion within one day of its having been filed (two hours in reality), before Defendants had an opportunity to file the opposition they **had already started**. Procedural rules must be adhered to, and basic equity demands that both parties be heard on motions. Defendants wish this Court to reconsider its ruling and, at least, put *some* limitation on Plaintiff's ability to request extensions unilaterally, indefinitely, and without Defendants' right to be heard on the matter. From Defendants' standpoint, Plaintiff files a motion and its ruled on in two hours without even giving Defendant's a chance to reply. There was no motion to shorten time, or ex parte, and this is the second time the court has ruled without following motion rules and the 11th extension requested by Plaintiff. (The first motion to extend to object to the Final Recommendations was also ruled upon before the expiration of the motion time period. There is a very uneasy feeling in Defendants "camp" there is some unspoken bias toward defendants. There is no provision for objection to Final Recommendations, and the local rules are clear that motions have a discreet reply date.

With respect to the underlying motion, Plaintiff argues that it inadvertently deleted the email noticing objections, casually glossing over the fact that ***it has two separate email addresses on the recipient list,*** (and if one was deleted why was not the other email and

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1 email account looked out. Plaintiff's original excuse that the email was inadvertently
 2 deleted just does not appear credible); and Plaintiff's argument is silent on why it did not
 3 go to the "recycle bin" to retrieve it, or check the court's docket as any prudent litigator
 4 would do when expecting something from opposing counsel, or verify with them that
 5 nothing had been filed once their deadline had passed. Given this highly contested case, it
 6 would seem naïve to not expect that something must be filed on the 23rd, the last day for a
 7 response.

9 Plaintiff agreed in its contract with the court to be bound by e-filing notice (Rule
 10 5.3(2)(B)). This is *yet another* delay in the entire process, with ***over eleven requests for***
 11 ***continuances*** and/or requests of counsel to stipulate to additional time prior to this by
 12 Plaintiff, at least one of which was requested *after the deadline had passed*. The subject
 13 motion for summary judgment was filed on ***May 26, 2005***, and it is still ongoing *ten*
 14 *months later*. It is ironic that when Defendants' counsel had a medical emergency, and
 15 required an extension of time for the deposition of Joe Pitch, counsel for Plaintiff only gave
 16 him two days, and accused Defendants of unnecessary delay.
 17

18 Defendants oppose further undue delay by Plaintiff's tardy pleadings, repetitive
 19 and numerous and increasingly incredible requests for extension of time, even requesting
 20 oral argument after it has already been denied by this Court. If Plaintiff's counsel is unable
 21 to meet now *twelve* separate deadlines throughout this matter without special
 22 accommodation by opposing counsel and/or this Court, Defendants respectfully submit that
 23 Plaintiff is not competent to represent his client in this matter.
 24

25 **CONCLUSION**
 26

27 Defendants respectfully request that this Court maintain its Final
 28 Recommendations and refer the matter back to the Judge, save and except the clerical

correction as to the sale amount of the vessel. In the alternative, should this Court grant Plaintiff's motion, Defendants respectfully request that this Court put some limitation on Plaintiff's ability to move for extensions of time for the remainder of the case and delay this matter indefinitely.

Dated: 14 March 2006

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By: s/Cory Birnberg
Cory A. Birnberg

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